COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

POST Guidelines *for* Child Safety

When a Custodial Parent or Guardian Is

ARRESTED

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COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

POST Guidelines for Child Safety —
When a Custodial Parent or Guardian Is Arrested

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foreword

Assembly Bill (AB) 1942 (Nava) was approved by the California Legislature and signed into law by Governor Arnold Schwarzenegger in September 2006. AB 1942 added Penal Code (PC) §833.2, which states (in part), *"…It is the intent of the Legislature to* ***encourage law enforcement and county child welfare agencies to develop protocols in collaboration with other local entities****, which may include local educational, judicial, correctional, and community-based organizations, when appropriate, regarding how to best cooperate in their response to the arrest of a caretaker parent or guardian of a minor child, to ensure the child's safety and well-being…."*

AB 1942 added PC §13517.7, which (in part) directs POST to *"…develop guidelines and training for use by state and local law enforcement officers to address issues related to child safety when a caretaker parent or guardian is arrested…"* This publication serves to fulfill this directive and provides guidelines and training topics for use by law enforcement agencies. These guidelines do not constitute a policy, but should be considered in the development of specific policies and procedures to be followed when a caretaker parent or guardian is arrested.

POST staff assembled a broad representation of stakeholders in the development of these guidelines. The information referenced and contained in this publication represents the best thinking of many experts in law enforcement and child welfare. POST is grateful for the assistance of those who so generously gave of their time and expertise. The Commission intends these guidelines as a resource for agency executives, watch commanders, and trainers to assist in providing for the well-being of California's most treasured resource — its children.

Questions about these guidelines may be directed to the Training Program Services Bureau at (916) 227-4885. Additional copies may be downloaded from POST's website at www.post.ca.gov.

Paul Cappitelli
Executive Director

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introduction

Research has shown that traumatic events that occur during childhood can have negative impacts throughout an individual's lifetime. The arrest of a parent or guardian can cause emotionally traumatic impacts for a child. The possibility that a child might not receive appropriate care following the arrest of a parent or guardian could increase the emotional trauma and further lead to physical trauma. These guidelines aim to reduce these possibilities by limiting the trauma (emotional or physical) that children experience as the result of the arrest of a parent or guardian.

These guidelines are the result of Assembly Bill (AB) 1942 (Nava) and are intended to improve services and ensure child safety when a parent or guardian is arrested. One impetus for the legislation leading to these guidelines involved a specific California Bay Area case. In that case officers of a local police department arrested a parent/guardian and left the child of the arrestee with the proprietor of a nearby business. The child had no specific relationship with the proprietor beyond "some familiarity." Media outlets covered the story and the public and child welfare groups were troubled by the officers' actions. No policy or procedure dictated how the child should have been cared for. Fortunately, this case did not have negative consequences for the child. Clearly, however, the potential existed.

These guidelines provide key criteria for law enforcement agencies to consider in the development of policy and procedures to ensure child safety when a parent or guardian is arrested. Once the policy is developed, it should be promulgated and supported by training to ensure that officers are knowledgeable about the policy.

A number of resources appear in the appendices of this publication. Beyond the guidelines, these resources provide the findings of academic research, case studies, and models from various communities. POST encourages readers to use these resources to gain better understanding of the issues and to develop solutions appropriate for individual communities.

Training Program Services Bureau
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GUIDELINE 1
procedures during arrest

Child safety is always important to peace officers. However, it becomes an officer's responsibility when he or she arrests a parent or guardian of a minor child. At that moment the parent or guardian is no longer free to perform their duty to care for their child(ren) — **the responsibility and duty transfers to the officer** who must ensure that the child receives appropriate care.

The complexity and level of care required depends on many factors. Foremost among these factors may be the availability of appropriate family/friends and the age and number of children needing care. Additional factors, such as location, mental and emotional states, and willingness to comply, may also present complications. When possible, officers should take reasonable steps to mitigate known factors in advance of an arrest. In other instances, prior identification of resources and review of procedures will mitigate the process and ensure the best possible outcome for the child.

penal code §13517.7(b)(1)

Procedures to ensure that officers and custodial employees inquire whether an arrestee has minor dependent children without appropriate supervision:

1) Inquire about and confirm the location of minor children during arrest.
    a) In the case of a DUI where a child is present in the vehicle, this may seem obvious. However, the arrestee may be on his/her way to pick up a child. An arrest in a mall, residence, restaurant, park, or business may have other implications. Grandparents, aunts/uncles, older brothers or sisters, babysitters — any number of persons could be responsible (i.e., have guardianship) for a minor child. Ask the arrestee to determine if this responsibility for minor children exists.
2) Look for evidence of children.
    a) Some arrestees may not want their child(ren) "taken" by law enforcement. They may lie in order to prevent this. Look for evidence that might corroborate any information received.
3) Allow the arrestee reasonable time to arrange for care of minor children with a responsible party, as appropriate.

a) Temporary placement of a minor child with family or friends is often most appropriate. Once it has been determined that minor children need care, allow the arrestee to arrange for it as appropriate.

   i) Notify/request county child welfare services, as appropriate.

   ii) Document actions taken.

   iii) Ensure supervisor review.

GUIDELINE 2
procedures during booking

frequently, officers will not be able to make arrangements for minor children (who are not present) at the arrest location. It is essential that these arrangements be made during the booking process to ensure child safety.

penal code §13517.7(b)(2)

Authorizing additional telephone calls by arrestees so that they may arrange for the care of minor dependent children:

1) Arresting officer shall confirm if the arrestee is responsible for minor children.
   a) Allow the arrestee to make phone calls to arrange for the care of minor children.
   b) Notify/request county child welfare services, as appropriate.
   c) Document actions taken.
   d) Ensure supervisor review.
2) Notify the booking officer/detention supervisor of the outcome(s) relating to minor children.

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GUIDELINE 3
use of county child welfare services

Child Welfare Services (CWS) agencies (also known as "social services" agencies) generally have greater capacities for meeting the needs of children than do law enforcement agencies. Therefore, it is of great benefit to law enforcement agencies to develop plans with local CWS agencies before these circumstances arise. Like any emergency or critical services system partnership, activation, and ***utilization of CWS will happen more effectively if standard operating procedures and protocols are established BEFORE they are needed.***

penal code §13517.7(b)(3)

Use of county child welfare services, as appropriate, and other similar service providers to assist in the placement of dependent children when the parent or guardian is unable or unwilling to arrange suitable care for the child or children:

1) Create a list of providers, services offered, and contact information and make it available to patrol officers and dispatchers.
2) Establish a *memorandum of understanding* (MOU) with the local CWS provider.
    a) Law enforcement agencies are strongly encouraged to establish procedures with county CWS agencies to assist in the disposition of dependent children to:
        i) Achieve expedited response and/or placement by CPS at the time of arrest.
        ii) Define mandated roles and responsibilities of each agency and the associated activities necessary to ensure/facilitate the safe disposition of minor children.
        iii) Formalize information sharing.

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GUIDELINE 4
identification of local government/ nongovernmental agencies

Identify appropriate service providers that can assist the agency in handling minor children when a parent or guardian has been arrested. Law enforcement agencies should plan and ***have MOUs in place with other governmental entities and primary CWS providers.*** Additionally, it is beneficial for law enforcement agencies to familiarize themselves with the many nongovernmental agencies that serve the needs of specific populations and assist in certain child placement situations.

penal code §13517.7(b)(4)

Identification of local government or nongovernmental agencies able to provide appropriate custodial services:

1) Identify local child welfare services (CWS) providers and their specific capacities (business hours, nights/weekends, response time, level of custodial care/placement available, etc.).
   - a) County CWS, to include:
     - i) Child Protective Services (CPS)
     - ii) Juvenile Services/Probation
     - iii) Mental Health
   - b) County Office of Education
   - c) School District
   - d) Community Action Agency
   - e) City/County Teen Center
   - f) YMCA-YWCA / Boys-Girls Clubs
   - h) Religious Organizations (church, halls, mosque, synagogue, temple, etc.)
   - i) Other Nonprofit/Nongovernmental Organizations
2) Create a list of providers, services offered, and contact information and make it available to patrol officers and dispatchers.

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GUIDELINE 5
temporary supervision of minor children

There are many levels of supervision for minor children. They will vary case by case. In one example, it might mean that an officer waits with a teenage child of an arrestee until the other parent arrives. In another instance, the officer might have to call CPS to come with a child safety seat to transport an infant to a hospital that can provide for the needs of a newborn. Finally, an officer may have to provide the transportation of the child to a designated service provider. In each situation, ***it is incumbent on the officer to try to provide the best possible solution for the situation***. At the most basic level, this might mean protecting the child from the immediate environment (weather, danger, etc.). At a higher level, this might mean finding placement for the child with a family member who can help the child understand where the parent is being taken and why. In all circumstances, the goal is for the child(ren) to be safe and protected from emotional trauma.

penal code §13517.7(b)(5)

Temporary supervision of minor children to ensure their safety and well-being:

1) During the arrest:
   - a) Protect child from the immediate volatile nature of the arrest.
   - b) Law enforcement should provide immediate supervision for the child(ren) until an appropriate caregiver arrives.
     - i) Consideration should be given to the child's familiarity with the surroundings, comfort, safety, and emotional state.
   - c) Law enforcement is encouraged to collaborate with local county child welfare services to establish a protocol for expedited response to assess the best disposition for the child(ren).
     - i) The primary goal is to minimize negative affects on the child(ren) while maintaining the integrity of the arrest and the safety of all involved parties.

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GUIDELINE 6
sample procedures to assist state and local government

Many agencies have developed procedures for child safety that have proven successful. While communities often differ in their needs and expectations, ***a number of best practices have emerged relative to child safety*** when the parent or guardian has been arrested. Identifying models that work is an excellent means for development of a customized, local solution.

penal code §13517.7(b)(6)

Sample procedures to assist state and local law enforcement agencies to develop ways to ensure the safety and well-being of children when the parent or guardian has been arrested:

1) Notable models.
   a) Santa Clara County has developed the first social worker/peace officer joint response team.
   b) City of San Jose has a joint response (with social services) protocol for parental arrests.
   c) City and County of San Francisco and Los Angeles County all have procedures for officers to follow when a parent/guardian is arrested.
2) Recommended procedures (when possible).
   a) Co-location of CPS social worker at law enforcement agency.
   b) Designated liaison officer to handle inquiries, complaints and questions.
   c) Cross training.
      i) Agency roles and responsibilities.
      ii) Child development and experience.
         (1) Attention should be given to effects of exposure to parental arrest.
      iii) Children's exposure to violence.
   d) Endorsement by agency leadership.
   e) Creation of an oversight committee.
   f) Data collection for self-assessment and cost analysis.

3) Benefits.
    a) Reduces traumatic effects of a parental arrest on children.
    b) Defuses volatile situations.
    c) Reduces officer's time at scene of arrest.
    d) Creates goodwill between law enforcement, parents, and the community at large.
    e) Enhances early intervention.
    f) Enhances the relationship between law enforcement and county child welfare agencies.
        i) Enables each to function more efficiently.
        ii) Reduces number of children placed in protective custody.
        iii) Provide greater buy-in from law enforcement.
        iv) Clarifies responsibilities for involved parties.

APPENDIX A
terms and definitions

Several terms are used in this document that may require clarification. They are defined here, solely in reference to their use in this publication.

Arrest	A custodial situation where the parent or guardian who is the subject/suspect is not free to carry out their responsibilities for taking care of a child.
Child	A person under the age of 18 who is in (or requires) the care of another, older person.
Child Welfare Services (County Child Welfare Services or CWS)	Any number of social services available for a child (counseling, foster care, placement, etc.).
Dependent	*Same as "child" above.*
Guardian	A person who is responsible for a child. A guardian may or may not be related to the child. A guardian may or may not be an adult.
Minor	*Same as "child" above.*
Officer	A peace officer as defined by Penal Code §832.
Peace Officer	*Same as "officer" above.*
Law Enforcement Officer	*Same as "officer" above.*
Parent	The biological or adoptive person who has custody of a child.
Supervision	The short-term act or process of maintaining responsibility for and/or control over a child.
Supervisor	Any officer who is responsible for approving or directing the work of other officers. A supervisor may or may not have a higher rank.
Temporary Supervision	*Same as "supervision" above.*

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APPENDIX B
legislation: AB 1942

Chapter 729: An act to add Sections 833.2 and 13517.7 to the Penal Code, relating to arrests. *[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]*

assembly bill 1942 (Nava)

ARRESTS

Legislative Counsel's Digest

Existing law generally regulates the conditions of arrest.

This bill would express the intent of the Legislature regarding the development of protocols by law enforcement and other entities, pertaining to arresting caretaker parents or guardians of minors, to ensure the safety and well-being of the minor. The bill would also state that the Legislature encourages the Department of Justice to apply for a federal grant to train local law enforcement agencies and assist them in developing protocols pertaining to child safety when a caretaker parent or guardian is arrested.

Existing law establishes the Commission on Peace Officer Standards and Training and charges it with various responsibilities.

This bill would require the commission to develop guidelines and training for use by state and local law enforcement officers to address issues related to child safety when a caretaker parent or guardian is arrested, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 833.2 is added to the Penal Code, to read:

833.2(a) It is the intent of the Legislature to encourage law enforcement and county child welfare agencies to develop protocols in collaboration with other local entities, which may include local educational, judicial, correctional, and community-based organizations, when appropriate, regarding how to best cooperate in their response to the arrest of a caretaker parent or guardian of a minor child, to ensure the child's safety and well-being.

(b) The Legislature encourages the Department of Justice to apply to the federal government for a statewide training grant on behalf of

California law enforcement agencies, with the purpose of enabling local jurisdictions to provide training for their law enforcement officers to assist them in developing protocols and adequately addressing issues related to child safety when a caretaker parent or guardian is arrested.

SECTION 2. Section 13517.7 is added to the Penal Code, to read:

13517.7 (a) The commission shall develop guidelines and training for use by state and local law enforcement officers to address issues related to child safety when a caretaker parent or guardian is arrested.

(b) The guidelines and training shall, at a minimum, address the following subjects:

(1) Procedures to ensure that officers and custodial employees inquire whether an arrestee has minor dependent children without appropriate supervision.

(2) Authorizing additional telephone calls by arrestees so that they may arrange for the care of minor dependent children.

(3) Use of county child welfare services, as appropriate, and other similar service providers to assist in the placement of dependent children when the parent or guardian is unable or unwilling to arrange suitable care for the child or children.

(4) Identification of local government or nongovernmental agencies able to provide appropriate custodial services.

(5) Temporary supervision of minor children to ensure their safety and well-being.

(6) Sample procedures to assist state and local law enforcement agencies to develop ways to ensure the safety and well-being of children when the parent or guardian has been arrested.

(c) The commission shall use appropriate subject matter experts, including representatives of law enforcement and county child welfare agencies, in developing the guidelines and training required by this section.

APPENDIX C
applicable statutes

The following California statutes are relevant to various situations involving children.

Penal Code §270.5	Refusing to accept minor child into home.
Penal Code §271	Abandonment of child under 14 years of age.
Penal Code §271a	Failure to provide for child under 14 years of age.
Penal Code §273a	Child abuse or endangerment.
Penal Code §851.5(c)	Custodial parent's right to phone calls at booking.
Penal Code §11165.2	Neglect, severe neglect, general neglect defined.
Welfare and Institutions Code §300	Dependent children — jurisdiction.
Welfare and Institutions Code §305	Dependent children — temporary custody and detention.
Welfare and Institutions Code §625	Wards — temporary custody and detention.

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APPENDIX D
additional resources

Many publications and web pages provide insight into the issue of child welfare and custody. The following resources are provided as references for further study. The Commission does not necessarily endorse nor guarantee the content.

California Attorney General's Office, Crime and Violence Prevention Center. *Safe from the Start: Reducing Children's Exposure to Violence – Promising Strategies and Programs Resource Guide.* www.safefromthestart.org/pdfs/promisingStrategies.pdf

California Department of Social Services, *Children and Family Services, Kinship Care.* www.childsworld.ca.gov/

Mumola, Christopher. *Incarcerated Parents and Their Children.* Washington, D.C.: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 2000. www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf

Nieto, Marcus. *In Danger of Falling through the Cracks: Children of Arrested Parents.* Sacramento, CA: California Research Bureau, State Library, April 2002 (CRB 02-009). www.library.ca.gov/crb/02/09/02-009.pdf

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Puddefoot, Ginny and Foster, Lisa K. *Keeping Children Safe when Their Parents Are Arrested: Local Approaches That Work.* Sacramento, CA: California Research Bureau, State Library, July 2007 (CRB-07-007). www.library.ca.gov/crb/07/07-006.pdf

Reed, Diane F. and Kate Karpilow. *Understanding the Child Welfare System in California: A Primer for Service Providers and Policymakers.* Berkeley, CA.: California Center for Research on Women and Families, Public Health Institute, 2002. www.ccrwf.org/publications/ChildWelfarePrimer.pdf

Simmons, Charlene Wear. *California Law and Children of Prisoners.* Sacramento, CA: California Research Bureau, State Library, February 2003 (CRB 03-003). www.library.ca.gov/crb/03/03/03-003.pdf

Simmons, Charlene Wear. *Children of Incarcerated Parents.* Sacramento, CA: California Research Bureau, State Library, March 2000 (CRB Note Vol. 7, No. 2). www.library.ca.gov/crb/00/notes/v7n2.pdf

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APPENDIX E
Links and URLs

below are the links used within this publication and their corresponding URLs to help locate the information on the web.

Link	URL
Copyright/Trademark Protection	http://www.post.ca.gov/conditions/#copyright
Assembly Bill 1942	http://info.sen.ca.gov/pub/05-06/bill/asm/ab_1901-1950/ab_1942_bill_20060314_amended_asm.pdf
City of San Jose	http://www.sanjoseca.gov/
City and County of San Francisco	http://www.ci.sf.ca.us/
Los Angeles County	http://lacounty.info/
Penal Code §832	http://law.onecle.com/california/penal/832.html
Penal Code §833.2	http://law.onecle.com/california/penal/833.2.html
PC §13517.7	http://law.onecle.com/california/penal/13517.7.html
Penal Code §270.5	http://law.onecle.com/california/penal/270.5.html
Penal Codes §271, §271a	http://law.onecle.com/california/penal/271.html
Penal Code §273a	http://law.onecle.com/california/penal/273a.html
Penal Code §851.5(c)	http://law.onecle.com/california/penal/851.5.html
Penal Code §11165.2	http://law.onecle.com/california/penal/11165.2.html
Santa Clara County	http://www.sccgov.org/

continues

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Link	URL
Welfare and Institutions Code §300	http://law.justia.com/california/codes/wic/300-304.7.html
Welfare and Institutions Code §305	http://law.justia.com/california/codes/wic/305-324.5.html
Welfare and Institutions Code §625	http://law.justia.com/california/codes/wic/625-641.html